

final rule will not result in the expenditure, in the aggregate, of \$140,800,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” See 66 FR 28,355 (May 22, 2001). Under the Executive Order a “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking; (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with Executive Order 13211, and has determined that this regulatory action is not a “significant energy action” within the meaning of the Executive Order.

H. Administrative Procedure Act

Under the Administrative Procedure Act, an independent Notice of Proposed Rulemaking (NPRM) is not required when an agency, for good cause, finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B). FRA believes that it is making only technical changes, clarifications, and minor amendments in response to petitions for reconsideration of FRA’s final rule. For this reason, and because FRA believes that it has provided sufficient opportunities for notice and comment through the NPRM, the final rule, and the petitions for reconsideration which were all contained in the public docket, publishing an independent NPRM is unnecessary.

I. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT’s dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65,

Number 70, Pages 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

- 1. The authority citation for Part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.49.

- 2. Section 213.234 is amended by revising the first sentence of paragraph (a), and revising paragraphs (d), (e), and (g), to read as follows:

§ 213.234 Automated inspection of track constructed with concrete crossties.

(a) *General.* Except for track described in paragraph (c) of this section, the provisions in this section are applicable on and after July 1, 2012. * * *

(d) *Performance standard for automated inspection measurement system.* The automated inspection measurement system must be capable of indicating and processing rail seat deterioration requirements that specify the following:

(1) An accuracy, to within 1/8 of an inch;

(2) A distance-based sampling interval, which shall not exceed five feet; and

(3) Calibration procedures and parameters assigned to the system, which assure that indicated and recorded values accurately represent rail seat deterioration.

(e) *Exception reports to be produced by system; duty to field-verify exceptions.* The automated inspection measurement system shall produce an exception report containing a systematic listing of all exceptions to § 213.109(d)(4), identified so that an appropriate person(s) designated as fully qualified under § 213.7 can field-verify each exception.

(1) Exception reports must be provided to or be made available to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234.

(2) Each exception must be located and field-verified no later than 48 hours after the automated inspection.

(3) All field-verified exceptions are subject to all the requirements of this part.

(4) Exception reports must note areas identified between 3/8 of an inch and 1/2 of an inch as an “alert.”

* * * * *

(g) *Procedures for integrity of data.*

The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the measurement system. At a minimum, the track owner shall do the following:

(1) Maintain and make available to FRA documented calibration procedures of the measurement system that, at a minimum, specify an instrument verification procedure that ensures correlation between measurements made on the ground and those recorded by the instrumentation; and

(2) Maintain each instrument used for determining compliance with this section such that it accurately provides an indication of the depth of rail seat deterioration in accordance with paragraph (d)(1) of this section.

* * * * *

Issued in Washington, DC, on September 6, 2011.

Joseph C. Szabo,
Administrator.

[FR Doc. 2011-23133 Filed 9-8-11; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2011-0139]

RIN 2127-AJ44

Federal Motor Vehicle Safety Standards, Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule, the first of two under the designation RIN 2127-AJ44, amends a provision in Federal Motor Vehicle Safety Standard No. 213, “Child restraint systems,” that permits NHTSA to allow manufacturers of child restraint systems (CRSs) manufactured before August 1, 2010, to choose to have NHTSA test the CRSs with either the Hybrid II 6-year old child (H2-6C) dummy or the Hybrid III 6-year-old child (HIII-6C) dummy. This final rule amends the provision to permit manufacturers of currently-manufactured CRSs the choice of

NHTSA testing their child restraints with either the H2–6C dummy or the HIII–6C dummy until further notice. While the HIII–6C is an advanced test dummy with state-of-the-art capabilities, NHTSA believes the agency should complete ongoing research programs to improve the usability of the HIII–6C dummy in FMVSS No. 213 before testing child restraints solely with this crash test dummy.

DATES: This final rule is effective September 9, 2011. If you wish to petition for reconsideration of this rule, your petition must be received by October 24, 2011.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Cristina Echemendia, Office of Rulemaking (Telephone: 202–366–6345) (Fax: 202–493–2990). For legal issues, you may call Deirdre Fujita, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: S7.1.3 of FMVSS No. 213 permits NHTSA to allow manufacturers of CRSs manufactured before August 1, 2010, to choose to have NHTSA test the CRSs with either the H2–6C dummy or the HIII–6C dummy when the CRS is subject to testing with a test dummy representative of a 6-year-old child.¹ NHTSA is amending S7.1.3 to permit manufacturers of currently-manufactured CRSs the choice of

¹ These are CRSs that are recommended by the manufacturer for use by children in a specified mass range that includes any children having a mass greater than 18 kilograms (40 pounds) or by children in a height range greater than 1100 millimeters. See S7.1.2(d) of FMVSS No. 213.

NHTSA testing their child restraints with either the H2–6C dummy or the HIII–6C dummy until further notice.

A supplemental notice of proposed rulemaking (SNPRM) preceding this final rule was published on November 24, 2010 (75 FR 71648, Docket No. NHTSA–2010–0158). This final rule is the first of two under the designation RIN 2127–AJ44. The second decisional document will be published later this year.²

Background

The agency adopted the HIII–6C into FMVSS No. 213 in a final rule³ published in response to a mandate in the Transportation Recall Enhancement, Accountability and Documentation Act (the TREAD Act) (November 1, 2000, Public Law 106–414, 114 Stat. 1800) that required NHTSA undertake rulemaking on child restraint systems. Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002. Section 14 specified nine elements for consideration by NHTSA in improving child restraint safety, including considering whether to require the use of the HIII–6C and other Hybrid III ATDs in FMVSS No. 213 compliance tests.

Consistent with the TREAD Act, NHTSA decided in its rulemaking to adopt the HIII–6C into FMVSS No. 213. NHTSA considered the dummy to be “considerably more biofidelic” than its predecessor, the H2–6C dummy, and with enhanced potential to measure an array of impact responses never before measured by a child ATD, such as neck moments and chest deflections.

However, the agency acknowledged there was mixed acceptance by the commenters of the HIII–6C dummy. Some commenters believed that the HIII–6C exhibited large neck elongation in the FMVSS No. 213 test environment that resulted in chin-to-chest and head-to-knee contact and correspondingly high head injury criterion (HIC) values. In evaluating those comments, NHTSA carefully analyzed its test data of sled testing conducted with the HIII–6C, but found no data indicating that head-to-chest or head-to-knee impacts were an issue or were typical. 68 FR at 37644. Accordingly, the HIII–6C was adopted into the standard, with what was then considered to be sufficient lead time to

² Pending proposals made by the agency in NPRMs published August 31, 2005, January 23, 2008, and November 24, 2010 will be addressed.

³ June 24, 2003, 68 FR 37620, Docket No. NHTSA–2003–15351.

enable manufacturers to become familiar with the dummy. The compliance date for the mandatory use of the HIII–6C dummy was set as August 1, 2005.

Eventually, after examining the performance of the HIII–6C in the FMVSS No. 213 environment, NHTSA extended the compliance date to August 1, 2010.⁴ We reiterated our belief that the HIII–6C dummy is more biofidelic in its components than its predecessor the H2–6C, and that the HIII–6C also has more extensive instrumentation to measure impact responses such as forces, accelerations, moments and deflections, which are crucial in evaluating vehicle occupant protection systems.⁵ Some CRS manufacturers have found the HIII–6C to be a satisfactory test instrument and are using the dummy to certify the compliance of their CRSs to FMVSS No. 213. These manufacturers are positioning the test dummy and measuring the head injury criterion (HIC) as currently required by FMVSS No. 213.

However, while the HIII–6C is an advanced test dummy with state-of-the-art capabilities and is being used to an extent today, NHTSA proposed⁶ that the agency should complete ongoing efforts to improve the HIII–6C dummy to make it more useful as an FMVSS No. 213 test device before testing child restraints solely with this device. The HIII–6C dummy has a softer neck than the H2–6C, which results in slightly greater head excursion results and larger HIC values (chin-to-chest contact) than the H2–6C. This, coupled with the stiff thorax of the HIII–6C dummy, accentuates the HIC values recorded by the dummy.

Several measures are underway to improve the Hybrid III dummy (see discussion in 75 FR at 71660). Until such time the HIII–6C is improved, we proposed on November 24, 2010 that FMVSS No. 213 should be amended to permit NHTSA to allow manufacturers the option of specifying that NHTSA use either the H2–6C or the HIII–6C dummy to test the manufacturer's child restraints until further notice.

⁴ August 5, 2008, 73 FR 45355, Docket No. NHTSA–2008–0137.

⁵ FMVSS No. 208, “Occupant crash protection,” uses Hybrid III dummies, including the HIII–6C dummy, in its compliance tests. The HIII–6C has been suitable for FMVSS No. 208 testing because the test environment for that standard is different than the FMVSS No. 213 environment, due to the presence of the air bag.

⁶ 75 FR 71648, November 24, 2010, Docket No. NHTSA–2010–0158.

Summary of Comments

The agency received three comments on the November 24, 2010 proposal, from: the Juvenile Products Manufacturers Association (JPMA), Evenflo Company Inc. (Evenflo), and the Advocates for Highway Safety (Advocates).

JPMA and Evenflo expressed support for the proposal to reinstate the optional use of the H2–6C and HIII–6C dummies in compliance testing until such time that design issues with the HIII–6C dummy are addressed. JPMA noted that both the HIII–6C and H2–6C dummies are being used to test and certify CRS models to FMVSS No. 213 by various CRS manufacturers. Evenflo noted that the H2–6C has been used for many years to permit qualification of CRSs which have provided good crash protection for children in real world crashes. Both JPMA and Evenflo expressed support of NHTSA's effort to fully implement the HIII–6C dummy into FMVSS No. 213, but noted that it must not be done until the issues with this dummy are addressed.

Advocates stated that it generally opposes allowing alternative compliance options because it allows manufacturers to select the option that affords the widest degree of manufacturing latitude, not necessarily safety protection, and may lead to confusion and ambiguous results. However, it stated that in this particular case, in light of concerns expressed about the biofidelity of the HIII–6C dummy, it understands the necessity to extend the optional use of the H2–6C dummy. Nonetheless, Advocates requested that the period of the extension be limited, and better defined, than simply left open-ended to "until such time FMVSS [No.] 213 is further amended to specify otherwise," as stated in the preamble of the SNPRM. Advocates suggested that a date certain be established for termination of the optional use of the H2–6C dummy in compliance testing.

Response and Decision

For the reasons stated in the November 2010 SNPRM and after consideration of the comments on the proposed optional use of the H2–6C dummy, NHTSA has decided to adopt the proposed amendment to FMVSS No. 213 that allows, at the manufacturer's option, the use of either the H2–6C or the HIII–6C dummy in the agency compliance tests of child restraints.

We understand and generally concur with Advocates' concerns about the potential for compliance options to engender opportunities for confusion

and ambiguity about compliance test results. For reasons such as those described by Advocates, NHTSA seeks to avoid incorporating compliance options into the FMVSSs whenever possible. However, in the case at hand, we have decided against establishing a termination date on the optional use of the H2–6C dummy.

As noted in the November 2010 SNPRM and earlier in this document, the agency has research projects underway to improve the capability of child dummies to assess CRS performance.⁷ After the agency fully evaluates the new dummy, the improved HIII–6C dummy will be considered for incorporation into FMVSS No. 213 and 49 CFR Part 572. At that time, the agency will consider the mandatory use of the improved dummy in FMVSS No. 213 and the termination of the optional use of the H2–6C dummy in the agency's compliance tests. If a termination date were included in S7.1.3, as the termination date approached, CRS manufacturers using the H2–6C to certify their CRSs may question whether their continued use of the dummy is well-advised. If the HIII–6C dummy were not sufficiently improved by the termination date, as the termination date approached, all CRS manufacturers would again be faced with uncertainty about how NHTSA would test their child restraints. To avoid these uncertainties, we have decided against including a termination date for the optional use of the H2–6C dummy.

Compliance Date

This final rule is effective on publication in the **Federal Register**. There is good cause for this effective date, as this final rule clarifies FMVSS No. 213 requirements as to how NHTSA will test child restraints and provides relief to manufacturers by allowing flexibility in the test dummy used in agency compliance tests of child restraints.

Regulatory Analyses and Notices

*Executive Order (E.O.) 12866
(Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures*

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866. This action is not "significant" under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). The final rule does not impose any new requirements on manufacturers that produce child restraint systems, but only reinstates a provision that allowed NHTSA to provide flexibility to manufacturers in directing NHTSA which test dummy (the H2–6C or the HIII–6C) to use in testing their restraints. The agency believes that the impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This final rule affects child restraint manufacturers. According to the size standards of the Small Business Association (at 13 CFR part 121.601), the small business size standard for manufacturers of "Motor Vehicle Seating and Interior Trim Manufacturing" (NAICS Code 336360) is 500 employees or fewer. Many child restraint manufacturers would be classified as small businesses under this standard. However, the final rule does not impose any new requirements on manufacturers that produce child restraint systems, but only reinstates a provision that allowed manufacturers flexibility in telling NHTSA which test dummy to use in testing their restraints. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

Executive Order 13132 (Federalism)

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional

⁷ The near-term Phase I upgrades to the HIII–6C dummy that are expected to be completed in the 2013 timeframe include improvements in the biofidelity of the dummy kinematics. The Phase II research is directed toward developing biomechanical response data for developing future improved child dummies. The Phase III of this research includes design, development, and evaluation of a new prototype 6-year old child dummy which is expected to be completed in the 2015 timeframe. 75 FR at 71660.

consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule would not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA’s rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer’s compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when

such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today’s rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today’s rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Environmental Impacts

We have considered the impacts of this final rule under the National Environmental Policy Act. This rulemaking action only reinstates a provision that allowed NHTSA to provide flexibility to manufacturers in directing NHTSA which test dummy (the H2–6C or the HIII–6C) to use in testing their restraints. This rulemaking does not require any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this

document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
 - Would more (but shorter) sections be better?
 - Could we improve clarity by adding tables, lists, or diagrams?
 - What else could we do to make the rule easier to understand?

If you have any responses to these questions, please send them to NHTSA.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

- 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

- 2. Section 571.213 is amended by revising S7.1.3 to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S7.1.3 Voluntary use of alternative dummies. At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), when this section specifies use of the 49 CFR part 572, subpart N (Hybrid III 6-year-old dummy) test dummy, the test dummy specified in 49 CFR part 572, subpart I (Hybrid II 6-year-old dummy) may be used in place of the subpart N test dummy.

* * * * *

Issued: September 1, 2011.

David L. Strickland,
Administrator

[FR Doc. 2011-23047 Filed 9-8-11; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2011-0140]

RIN 2127-AL02

Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of a September 2008 final rule that made changes to a new Federal motor vehicle safety standard requiring light vehicles to be equipped with electronic stability control systems. In that final rule, the agency stated that it had previously fulfilled the obligations of the United States with respect to initiating rulemaking with respect to the global technical regulation for electronic stability control and had adopted the regulation to the extent appropriate. The petition for reconsideration identified three areas of the present text of the electronic stability control standard that are not, in the petitioner's view, harmonized with the global technical regulation. After considering the petition, the agency is granting the petition in part and amending slightly the test procedures of the standard and is otherwise denying the petition.

DATES: This final rule is effective October 11, 2011.

Petitions for reconsideration must be received not later than October 24, 2011.

ADDRESSES: Petitions for reconsideration should refer to the docket number and must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact John Lee, Office of Crash Avoidance Standards, by telephone at (202) 366-4924, and by fax at (202) 366-7002.

For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366-2992, and by fax at (202) 366-3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background of the ESC Regulation

A. Benefits of ESC

Electronic stability control (ESC) systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). NHTSA's crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 55 percent and fatal single-vehicle crashes of light trucks and vans (LTVs) by 50 percent.¹ NHTSA estimates that ESC has the potential to prevent 56 percent of the fatal passenger car rollovers and 74 percent of the fatal LTV first-event rollovers that would otherwise occur in single-vehicle crashes.²

B. ESC Final Rule

On April 6, 2007, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems*, which sets forth requirements for ESC systems on new light vehicles.³ FMVSS No. 126 contains performance requirements that include both definitional and dynamic testing elements. These elements together ensure that ESC systems intervene properly to limit oversteer and understeer in order to provide the level of yaw (directional) stability associated with the high level of safety benefits observed in crash data studies of ESC-equipped vehicles. NHTSA adopted a phase-in schedule to implement this requirement such that all light vehicles manufactured on or after September 1,

¹ Sivinski, R., Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation; DOT HS 811 486 (June 2011).

² *Id.*

³ 72 FR 17236. Docket No. NHTSA-2007-27662, item 1.